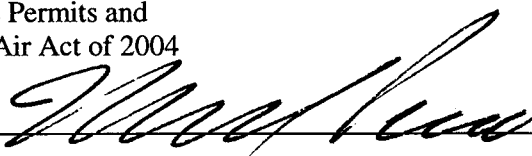


REPORT

DATE: October 2, 2003
TO: The Regional Council
FROM: Charlotte Eckelbecker, Government Affairs Analyst
Phone: (213) 236-1811 E-Mail: eckelbec@scag.ca.gov
SUBJECT: AB 1497 (Montanez) Solid Waste Permits and
SB 288 (Sher) Protect California Air Act of 2004

EXECUTIVE DIRECTOR'S APPROVAL



RECOMMENDED ACTION: Oppose

SUMMARY:

At its September 4th meeting, the EEC considered Assembly Bill 1497, introduced by Assemblymember Cindy Montanez (D-San Fernando), relating to solid waste facilities, and Senate Bill 288, introduced by Senator Byron Sher (D-Palo Alto), establishing the Protect California Air Act of 2004. The EEC recommends the Regional Council oppose the bills.

BACKGROUND:

AB 1497

According to its author, AB 1497 was introduced to establish regulations for an enforcement agency to use to determine when a change in the operation of a solid waste facility triggers a revised permit. Opposition to the bill arose not from these closure and postclosure regulations, but instead came from the bill's requirement that solid waste facility operators establish a retraining and re-employment trust fund for their existing employees when a facility closes. The EEC objected to those provisions.

A September 4th amendment to the bill softens the retraining mandate. The trust fund is eliminated. The bill now requires the submission of a Labor Transition Plan in a facility's closure and postclosure filings. Subject to any collective bargaining agreements, Labor Transition Plans must include provisions that ensure displaced employees receive preferential reemployment with their current employers when comparable positions are available. Labor Transition Plans must also include provisions to assist displaced employees in finding other comparable employment.

SB 288

According to the author, SB 288 was introduced to prevent the backsliding of California's air quality standards in light of US EPA's repeal last year of federal new source review (NSR) procedures. NSR is one of the few means air quality agencies have to require industrial facilities to install modern pollution control equipment. Prior to late amendments, SB 288 authorized CARB to prescribe and enforce an air quality management plan for a district if it determined the district's plan allowed backsliding. Criticism arose over the bill's rigidity, implementation problems and permission of citizen lawsuits. EEC opposed SB 288.

Amendments to SB 288 have reintroduced implementation flexibility in the bill and citizen lawsuits have been deleted. CARB remains authorized to make and implement a plan for a district, but because a district may adapt its plan to the new NSR procedures so long as offsets are in place, it is less likely that CARB would intercede. The bill as amended also extends SCAQMD's \$1 motor vehicle registration fee from January 1, 2005 to January 1, 2010.

000145

SUPPORT AND OPPOSITION:

AB 1497 prior to amendment

The following agencies supported AB 1497

- AFSCME, AFL-CIO, California Labor Federation, California Teamsters Public Affairs Council, Californians Against Waste, Los Angeles Councilmembers Ruth Galanter and Alex Padilla

The following agencies opposed AB 1497

- California Chamber of Commerce, California Refuse Removal Council, Inland Empire Disposal Association, League of Cities

SB 288 prior to amendment

The following agencies supported SB 288

- American Lung Association, California Environmental Rights Alliance, California Nurses Association, League of Conservation Voters, Natural Resources Defense Council, Planning and Conservation League, Sierra Club California

The following agencies opposed SB 288

- California Chamber of Commerce, American Forest & Paper Association, California Council for Environmental and Economic Balance, California Manufacturers and Technology Association

BILL STATUS:

As of this writing on September 15, 2003, AB 1497 has been sent to Enrollment. SB 288 was delivered to the Governor on September 11th. Positions adopted by the Regional Council may be articulated to the Governor prior to his October 13th deadline to sign or veto bills.

FISCAL IMPACT:

All work related to adopting the recommended staff action is contained within the adopted FY 03/04 budget and adopted 2003 SCAG Legislative Program and does not require the allocation of any additional financial resources.

CAE#89265



AMENDED IN SENATE SEPTEMBER 8, 2003

AMENDED IN SENATE SEPTEMBER 4, 2003

AMENDED IN SENATE AUGUST 18, 2003

AMENDED IN SENATE JULY 16, 2003

AMENDED IN SENATE JULY 2, 2003

AMENDED IN ASSEMBLY MAY 13, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1497

**Introduced by Assembly Member Montanez
(Coauthors: Assembly Members Diaz, Levine, and Nunez)**

February 21, 2003

An act to amend Sections 44004 and 45011 of, and to add Section 43501.5 to, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1497, as amended, Montanez. Solid waste facilities: permits.

(1) The existing California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, establishes an integrated solid waste management program. Existing law prohibits the operation of a solid waste facility without a solid waste facilities permit and requires the operator of a solid waste landfill to submit to the board and the enforcement agency a plan for the closure and postclosure maintenance of the solid waste

landfill and evidence of financial ability to provide for those costs. Existing law prohibits the operator of a solid waste facility from making any significant change in the design or operation of the solid waste facility not authorized by the existing permit, unless the change is approved by the enforcement agency, pursuant to a specified procedure. *Existing law requires an operator to appeal a decision of the enforcement agency with regard to the approval of that change.*

This bill would require a person who is required to file a closure plan to also file with the enforcement agency a Labor Transition Plan that includes provisions for the preferential reemployment and transfer rights of displaced employees, as specified, and provisions to ensure compliance with existing statutory requirements for relocations, terminations, and mass layoffs that are applicable to certain employers. The bill would require a person submitting a final closure plan to additionally submit a certification to the board and the enforcement agency that the provisions in the labor transition plan will be implemented.

The bill would require an enforcement agency to submit its proposed determination regarding whether a change to the solid waste facility will be approved to the board for comment, and to hold at least one public hearing on the proposed determination, *in accordance with specified notice requirements.* The bill would also require the enforcement agency to ~~submit an appeal of its determination to the board for comment, and to hold at least one public hearing on the appeal~~ *provide notice of an operator's appeal of the enforcement agency's approval of change in the same manner as notice is provided for the public hearing.* The bill would require the enforcement agency to provide notice, as specified, of the hearing.

The bill would require the board to adopt regulations relating to the public hearing and that define the term "significant change in the design or operation of the solid waste facility that is not authorized by the existing permit." The bill would increase various time periods regarding the filing of an application for revision of the solid waste facilities permit.

The bill would impose a state-mandated local program by imposing new duties upon enforcement agencies with regard to solid waste facilities permits, thereby imposing a state-mandated local program.

(2) Existing law authorizes an enforcement agency to issue an order establishing a time schedule for a solid waste facility to comply with requirements relating to waste management when the enforcement

agency determines that the facility is not meeting those requirements. Existing law authorizes the order to provide for an administrative civil penalty in an amount not to exceed \$5,000 per day of violation, and not to exceed a total of \$15,000 in any one calendar year, if compliance is not achieved in accordance with the time schedule. Existing law prohibits imposition of that penalty for the first 3 minor violations of the same requirement, as specified. Existing law requires the enforcement agency, before issuing an order imposing a civil or administrative penalty, to notify the enforcement agency's governing body and make specified determinations regarding the circumstances of the violation and alternatives to the penalty.

This bill would delete the cap on the total amount of the penalty in one calendar year, delete the prohibition on imposing the penalty for minor violations, and delete the requirement that the enforcement agency take those actions before issuing the order imposing a civil or administrative penalty. The bill would broaden the circumstances under which the order imposing the penalty may be made.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 43501.5 is added to the Public
2 Resources Code, to read:

3 43501.5. (a) In addition to the requirements of this article,
4 and Section 21780 of Title 27 of the California Code of
5 Regulations, a person who is required to file a final closure plan
6 shall also file with the enforcement agency a Labor Transition Plan
7 that includes all of the following:

8 (1) Provisions that ensure, subject to any requirements already
9 established pursuant to a collective bargaining agreement,
10 preferential reemployment and transfer rights of displaced
11 employees to comparable available employment with the same

1 employer for a period of no less than one year following the
2 closure of the solid waste facility.

3 (2) Provisions to provide displaced employees assistance in
4 finding comparable employment with other employers.

5 (3) Provisions to ensure compliance with all applicable
6 provisions of Chapter 4 (commencing with Section 1400) of Part
7 of 4 of Division 2 of the Labor Code.

8 (b) When submitting the final closure plan, the operator shall
9 submit, in addition to the requirements of subdivision (a), a
10 certification to the board and the enforcement agency that the
11 provisions described in paragraphs (1) to (3), inclusive, of
12 subdivision (a), will be implemented, subject to any requirements
13 already established under a collective bargaining agreement.

14 (c) For the purposes of this section, "comparable
15 employment" means the same or a substantially similar job
16 classification at equal or greater wage and benefit levels in the
17 same geographic region of the state.

18 SEC. 2. Section 44004 of the Public Resources Code is
19 amended to read:

20 44004. (a) An operator of a solid waste facility may not make
21 a significant change in the design or operation of the solid waste
22 facility that is not authorized by the existing permit, unless the
23 change is approved by the enforcement agency, the change
24 conforms with this division and all regulations adopted pursuant
25 to this division, and the terms and conditions of the solid waste
26 facilities permit are revised to reflect the change.

27 (b) If the operator wishes to change the design or operation of
28 the solid waste facility in a manner that is not authorized by the
29 existing permit, the operator shall file an application for revision
30 of the existing solid waste facilities permit with the enforcement
31 agency. The application shall be filed at least 180 days in advance
32 of the date when the proposed modification is to take place unless
33 the 180-day time period is waived by the enforcement agency.

34 (c) The enforcement agency shall review the application to
35 determine all of the following:

36 (1) Whether the change conforms with this division and all
37 regulations adopted pursuant to this division.

38 (2) Whether the change requires review pursuant to Division
39 13 (commencing with Section 21000).

(d) Within 60 days from the date of the receipt of the application for a revised permit, the enforcement agency shall inform the operator, and if the enforcement agency is a local enforcement agency, also inform the board, of its determination to do any of the following:

(1) Allow the change without a revision to the permit.

(2) Disallow the change because it does not conform with the requirements of this division or the regulations adopted pursuant to this division.

(3) Require a revision of the solid waste facilities permit to allow the change.

(4) Require review under Division 13 (commencing with Section 21000) before a decision is made.

(e) The operator has 30 days within which to appeal the decision of the enforcement agency to the hearing panel, as authorized pursuant to Article 2 (commencing with Section 44305) of Chapter 4. *The enforcement agency shall provide notice of a hearing held pursuant to this subdivision in the same manner as notice is provided pursuant to subdivision (h).*

(f) Under circumstances that present an immediate danger to the public health and safety or to the environment, as determined by the enforcement agency, the 180-day filing period may be waived.

(g) (1) A permit revision is not required for the temporary suspension of activities at a solid waste facility if the suspension meets either of the following criteria:

(A) The suspension is for the maintenance or minor modifications to a solid waste unit or to solid waste management equipment.

(B) The suspension is for temporarily ceasing the receipt of solid waste at a solid waste management facility and the owner or operator is in compliance with all other applicable terms and conditions of the solid waste facilities permit and minimum standards adopted by the board.

(2) An owner or operator of a solid waste facility who temporarily suspends operations shall remain subject to the closure and postclosure maintenance requirements of this division and to all other requirements imposed by federal law pertaining to the operation of a solid waste facility.

(3) The enforcement agency may impose any reasonable conditions relating to the maintenance of the solid waste facility, environmental monitoring, and periodic reporting during the period of temporary suspension. The board may also impose any reasonable conditions determined to be necessary to ensure compliance with applicable state standards.

(h) (1) (A) Before making ~~a final~~ *its* determination pursuant to subdivision (d) ~~or hearing an appeal pursuant subdivision (e),~~ the enforcement agency shall submit the proposed determination ~~or the appeal~~ to the board for comment and hold at least one public hearing on the proposed determination ~~or the appeal~~. The enforcement agency shall give notice of the hearing pursuant to Section 65091 of the Government Code, except that the notice shall be provided to all owners of real property within a distance other than 300 feet of the real property that is the subject of the hearing, if specified in the regulations adopted by the board pursuant to subdivision (i). The enforcement agency shall also provide notice of the hearing to the board when it submits the proposed determination to the board.

(B) The enforcement agency shall mail or deliver the notice required pursuant to subparagraph (A) at least 10 days prior to the date of the hearing to any person who has filed a written request for the notice with a person designated by the enforcement agency to receive these requests. The enforcement agency may charge a fee to the requester in an amount that is reasonably related to the costs of providing this service and the enforcement agency may require each request to be annually renewed.

(C) The enforcement agency shall consider environmental justice issues when preparing and distributing the notice to ensure that the notice is concise and understandable for limited-English-speaking populations.

(2) If the board comments pursuant to paragraph (1), the board shall specify whether the proposed determination is consistent with the regulation adopted pursuant to subdivision (i).

(i) (1) The board shall, to the extent resources are available, adopt regulations that implement subdivision (h) and define the term “significant change in the design or operation of the solid waste facility that is not authorized by the existing permit.”

(2) While formulating and adopting the regulations required pursuant to paragraph (1), the board shall consider

1 recommendations of the Working Group on Environmental Justice
2 and the advisory group made pursuant to Sections 71113 and
3 71114 and the report required pursuant to Section 71115.

4 SEC. 3. Section 45011 of the Public Resources Code is
5 amended to read:

6 45011. (a) If an enforcement agency determines that a solid
7 waste facility or disposal site, is in violation of this division, any
8 regulations adopted pursuant to this division, any corrective action
9 or cease and desist order, or any other order issued under this
10 division, or poses a potential or actual threat to public health and
11 safety or the environment, the enforcement agency may issue an
12 order establishing a time schedule according to which the facility
13 or site shall be brought into compliance with this division. The
14 order may also provide for a civil penalty, to be imposed
15 administratively by the enforcement agency, in an amount not to
16 exceed five thousand dollars (\$5,000) for each day on which a
17 violation occurs, if compliance is not achieved in accordance with
18 that time schedule.

19 (b) Before issuing an order that imposes a civil penalty
20 pursuant to subdivision (a), an enforcement agency shall do both
21 of the following:

22 (1) Notify the operator of the solid waste facility that the
23 facility is in violation of this division.

24 (2) Upon the request of the operator of the solid waste facility,
25 meet with the operator of the solid waste facility to clarify
26 regulatory requirements and to determine what actions, if any, that
27 the operator may voluntarily take to bring the facility into
28 compliance by the earliest feasible date.

29 SEC. 4. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 a local agency or school district has the authority to levy service
32 charges, fees, or assessments sufficient to pay for the program or
33 level of service mandated by this act, within the meaning of
34 Section 17556 of the Government Code.

O

CHAPTER _____

An act to add Chapter 4.5 (commencing with Section 42500) to Part 4 of Division 26 of, the Health and Safety Code, and to amend Section 9250.11 of the Vehicle Code, relating to air quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 288, Sher. Air quality: Protect California Air Act of 2003: South Coast Air Quality Management District: air pollution control fees.

(1) Existing law, the federal Clean Air Act, requires each major new and modified source of air pollution to undergo "new source review" to ensure that facilities install the best available control equipment, obtain offsets for any new emissions, and comply with any other requirement to ensure that the new and modified sources do not adversely affect air quality. On December 31, 2002, the Administrator of the United States Environmental Protection Agency promulgated regulations implementing the new source review program that change that program. Under the federal Clean Air Act, states may adopt air pollution control requirements that are more stringent than federal requirements. Existing law designates the State Air Resources Board as the air pollution control agency responsible for the coordination of the activities of air pollution control districts and air quality management districts for the purposes of the federal Clean Air Act. Subject to the powers of the state board, the districts are required to adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards in all areas affected by nonvehicular emission sources under their jurisdiction. Each district is authorized to establish a permit system that requires, except as specified, that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance that may cause the issuance of air contaminants, the person obtain a permit from the air pollution control officer of the district.

This bill would establish the Protect California Air Act of 2003. The bill would make legislative findings and declarations regarding those new federal regulations and their effect on the federal Clean Air Act, as implemented in California. It would

declare the purposes of the bill to include the need to attain and maintain ambient air quality standards by the earliest practicable date, to protect public health and welfare from the adverse effects of air pollution, and to ensure that economic growth will occur in a manner consistent with the preservation of existing clean air resources.

This bill would prohibit districts from amending or revising their new source review rules or regulations to be less stringent than those rules or regulations that existed on December 30, 2002, except under certain circumstances. It would require the state board to provide on its Web site, and in writing for purchase by the public, a copy of the federal new source review regulations as they read on December 30, 2002, and a related document.

(2) Existing law, until January 1, 2005, authorizes the South Coast Air Quality Management District to impose a \$1 fee on the renewal of registration of any motor vehicle in the district, and requires the district to utilize the revenues generated by the imposition of that fee to reduce air pollution from motor vehicles through the implementation of a clean-burning fuel program in that district.

This bill would extend that authority until January 1, 2010.

The people of the State of California do enact as follows:

SECTION 1. Chapter 4.5 (commencing with Section 42500) is added to Part 4 of Division 26 of the Health and Safety Code, to read:

CHAPTER 4.5. PROTECT CALIFORNIA AIR ACT OF 2003

42500. This chapter shall be known, and may be cited, as the Protect California Air Act of 2003.

42501. The Legislature finds and declares all of the following:

(a) For over 25 years, the federal Clean Air Act (42 U.S.C. Sec. 7401, et seq.) has required major new and modified sources of air pollution to be subject to a new source review program for nonattainment areas and for the prevention of significant deterioration, in order to ensure that those sources use the requisite level of emission control, offset any new emissions, and comply

with other requirements, as a means of ensuring that those new and modified sources do not adversely affect air quality.

(b) Requiring controls and emission offsets for new and modified sources ensures that industrial growth does not result in unacceptable levels of air pollution and that existing sources operate more cleanly over time by applying emission controls when those sources are overhauled or upgraded. Without these limits, air quality would degrade over time, and industrial growth, critical to the economic health of the state, would be foreclosed.

(c) The new source review program has been a cornerstone of the state's efforts to reduce pollution from new and existing industrial sources by requiring those sources to use the requisite level of emission controls based on the attainment status of the area where the source is located.

(d) The U.S. Environmental Protection Agency (U.S. E.P.A.) initially promulgated, and subsequently has revised, the new source review program to carry out the requirements of the federal Clean Air Act for preconstruction review of new and modified sources of air pollutants by the states.

(e) On December 31, 2002, the U.S. E.P.A., under the direction of the President of the United States, promulgated regulations that substantially weaken the basic federal new source review program (67 Fed.Reg. 80186-80289 (Dec. 31, 2002)). In promulgating the regulatory amendments, the U.S. E.P.A. claims that the new source review program has impeded or resulted in the cancellation of projects that would maintain or improve reliability, efficiency, and safety. This claim is contradicted by California's experience under the new source review programs of the air pollution control and air quality management districts.

(f) The amendments promulgated December 31, 2002, will drastically reduce the circumstances under which modifications at an existing source would be subject to federal new source review. The U.S. E.P.A. has also proposed a rule that will change the definition of "routine maintenance, repair and replacement." If that rule is finalized, it will significantly worsen the situation.

(g) The newly revised and proposed federal new source review reneges on the promise of clean air embodied in the federal Clean Air Act, and threatens to undermine the air quality of the State of California and thereby threaten the health and safety of the people of the State of California.

(h) Section 107 of the federal Clean Air Act (42 U.S.C. Sec. 7407) provides that the state has primary responsibility for meeting ambient air quality standards in all areas of the state, and that the means to achieve the standards shall be set out in the state implementation plan, or SIP.

(i) Section 116 of the federal Clean Air Act (42 U.S.C. Sec. 7416) preserves the right of states to adopt air pollution control requirements that are more stringent than comparable federal requirements. Moreover, the recent revisions to the federal new source review regulations provide that the states may adopt permitting programs that are “at least as stringent” as the new federal “revised base program,” and that the federal regulations “certainly do not have the goal of ‘preempting’ State creativity or innovation.” (67 Fed.Reg. 80241 (Dec. 31, 2002)).

42502. The Legislature further finds and declares all of the following:

(a) The people of the State of California have a primary interest in safeguarding the air quality in the state from degradation and in ensuring the enhancement of the air quality of the state.

(b) Emissions from nonvehicular sources are a significant contributing factor to unhealthful levels of air pollution in California. These emissions must be controlled to protect public health and the environment, and to allow the economic benefits of new and expanded business in this state without compromising those important goals.

(c) Under state law, air quality management districts and air pollution control districts have primary responsibility for controlling air pollution caused by nonvehicular sources, including stationary sources. The primary mechanism for controlling pollution from new and modified stationary sources is the existing new source review program of the districts. The application of the new source review programs requires that all new and modified sources, unless specifically exempted, must apply control technology and offset emissions increases as a condition of receiving a permit.

(d) The districts generally require the application of the lowest achievable emission rate, also known as California BACT, to achieve the necessary level of emission control from new or modified sources.

(e) The requirement for California BACT, offsets, and other requirements are set out in the rules and regulations adopted by the districts to establish the new source review program. These rules and regulations, which typically are more stringent than the minimum requirements established by federal law, are reviewed and approved by the state board and transmitted to the U.S. E.P.A. for inclusion in the SIP.

(f) The districts have one of the most effective new source review programs in the nation, with requirements for advanced emission control technology on new and expanding sources as its foundation. This technology-based program succeeds by requiring application of emission control technology at the time of construction or when a source undergoes a significant modification, which maximizes the emission reduction benefits and reduces costs.

(g) With this and other programs, California has been able to improve air quality despite increases in population, industrial output, and motor vehicle use. However, significant areas of the state still do not meet the federal or state ambient air quality standards, which are set at levels necessary to protect public health and welfare. Any rollback of the new source review program, as a result of the federal "reforms," would exacerbate the continuing air pollution challenges faced by the state and delay attainment of the state and federal ambient air quality standards.

42503. The purposes of this chapter are all of the following:

(a) To attain and maintain state and federal ambient air quality standards by the earliest practicable date.

(b) To protect public health and welfare from any actual or potential adverse effect which reasonably may be anticipated to occur from air pollution.

(c) To preserve, protect and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value.

(d) To ensure that economic growth will occur in a manner consistent with the preservation of existing clean air resources.

(e) To ensure that emissions from any source in the state will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for this or any other state.

(f) To ensure that any decision to permit increased air pollution in any area to which this chapter applies is made only after careful evaluation of all the consequences of that decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

42504. (a) No air quality management district or air pollution control district may amend or revise its new source review rules or regulations to be less stringent than those that existed on December 30, 2002. If the state board finds, after a public hearing, that a district's rules or regulations are not equivalent to or more stringent than the rules or regulations that existed on December 30, 2002, the state board shall promptly adopt for that district the rules or regulations that may be necessary to establish equivalency, consistent with subdivision (b).

(b) (1) In amending or revising its new source review rules or regulations, a district may not change any of the following that existed on December 30, 2002, if the amendments or revisions would exempt, relax or reduce the obligations of a stationary source for any of the requirements listed in paragraph (2):

(A) The applicability determination for new source review.

(B) The definition of modification, major modification, routine maintenance, or repair or replacement.

(C) The calculation methodology, thresholds or other procedures of new source review.

(D) Any definitions or requirements of the new source review regulations.

(2) (A) Any requirements to obtain new source review or other permits to construct, prior to commencement of construction.

(B) Any requirements for best available control technology (BACT).

(C) Any requirements for air quality impact analysis.

(D) Any requirements for recordkeeping, monitoring and reporting in a manner that would make recordkeeping, monitoring, or reporting less representative, enforceable, or publicly accessible.

(E) Any requirements for regulating any air pollutant covered by the new source review rules and regulations.

(F) Any requirements for public participation, including a public comment period, public notification, public hearing, or

other opportunities or forms of public participation, prior to issuance of permits to construct.

(c) In amending or revising its new source review rules or regulations, a district may change any of the items in paragraph (1) of subdivision (b) only if the change is more stringent than the new source review rules or regulations that existed on December 30, 2002.

(d) Notwithstanding subdivisions (a), (b), and (c), a district may amend or revise a rule or regulation if a district board, at the time the amendments or revisions are adopted, makes its decision based upon substantial evidence in the record, the amendments or revisions are submitted to and approved by the state board after a public hearing, and each of the following conditions is met:

(1) The amended or revised rule or regulation will do one of the following:

(A) Will replace an existing rule or regulation that caused a risk to public health or safety from exposure to a toxic material, a dangerous condition, or an infectious disease with a rule or regulation that provides greater protection to public health or safety.

(B) Will replace an existing rule or regulation that has been found to be unworkable due to engineering or other technical problems with a rule or regulation that is effective.

(C) Will allow an amendment to an existing rule or regulation that otherwise will cause substantial hardship to a business, industry, or category of sources, if all of the following criteria are met:

(i) The amendment is narrowly tailored to relieve the identified hardship.

(ii) The district provides equivalent reductions in emissions of air contaminants to offset any increase in emissions of air contaminants.

(iii) All reductions in emissions of air contaminants are real, surplus, quantifiable, verifiable, enforceable, and timely. For the purposes of this clause, reductions are timely if they occur no more than three years prior to, and no more than three years following, the occurrence of the increase in emissions of air contaminants.

(iv) Information regarding the reductions in emissions of air contaminants is available to the public.

(D) Is a temporary rule or regulation necessary to respond to an emergency consisting of a sudden, unexpected occurrence and demanding prompt action to prevent or mitigate loss of or damage to life, health, property, or essential services and the temporary rule or regulation does not extend beyond the reasonably anticipated duration of the emergency.

(E) Will not, if the district is in attainment with all national ambient air quality standards, impair or impede continued maintenance of those standards or progress toward achieving attainment of state ambient air quality standards.

(2) The amended or revised rule or regulation will not exempt, relax, or reduce the obligation of any stationary source under the rules or regulations of the district, as those rules or regulations existed on December 30, 2002, to obtain a permit or to meet best available control technology requirements. This paragraph only applies to a source that constituted a major source under the rules or regulations of a district that existed on December 30, 2002, and does not apply to any individual best available control technology determination.

(3) The amended or revised rule or regulation is otherwise consistent with this division.

(4) The amended or revised rule or regulation is consistent with any guidance approved by the state board regarding environmental justice.

42505. For purposes of this chapter, each district's "existing new source review program" is comprised of those new source review rules and regulations for both nonattainment and prevention of significant deterioration for new, modified, repaired, or replaced sources that have been adopted by the district governing board on or prior to December 30, 2002, that have been submitted to the U.S. Environmental Protection Agency by the state board for inclusion in the state implementation plan and are pending approval or have been approved by the U.S. Environmental Protection Agency.

42506. In order to assist in interpreting district rules and regulations governing new source review for nonattainment areas and for prevention of significant deterioration, the state board shall provide on its Web site and in writing for purchase by the public, a copy of the federal new source review regulations as they existed on December 30, 2002, and the United States Environmental

Protection Agency's guidance document entitled, "New Source Review Workshop Manual: Prevention of Significant Deterioration and Nonattainment Area Permitting," (October 1990 Draft).

42507. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SEC. 2. Section 9250.11 of the Vehicle Code is amended to read:

9250.11. (a) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of one dollar (\$1) may be imposed by the South Coast Air Quality Management District and shall be paid to the department, upon renewal of registration of any motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code and registered in the south coast district, except any vehicle that is expressly exempted under this code from the payment of registration fees.

(b) Prior to imposing fees pursuant to this section, the south coast district board shall approve the imposition of the fees through the adoption of a resolution by both a majority of the district board and a majority of the district board who are elected officials. After deducting all costs incurred pursuant to this section, the department shall distribute the additional fees collected pursuant to subdivision (a) to the south coast district, which shall use the fees to reduce air pollution from motor vehicles through implementation of Sections 40448.5 and 40448.5.1 of the Health and Safety Code.

(c) Any memorandum of understanding reached between the district and a county prior to the imposition of a one dollar (\$1) fee by a county shall remain in effect and govern the allocation of the funds generated in that county by that fee.

(d) The South Coast Air Quality Management District shall adopt accounting procedures to ensure that revenues from motor vehicle registration fees are not commingled with other program revenues.

(e) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date.

